

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:06CV60

**MERRIMON BURWELL OXLEY)
and JAMES OXLEY, d/b/a)
MEADOWBROOK NURSERY)
AND FARM and d/b/a WE-DU)
NATIVES,)
)
 Plaintiffs,)
)
 Vs.)
)
**ASPLUNDH TREE EXPERT CO.,)
and CSX TRANSPORTATION,)
INC.,)
)
 Defendants.)**
_____)**

ORDER

THIS MATTER is before the Court on the Magistrate Judge's Memorandum and Recommendation, filed May 16, 2006.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell, was designated to consider pending motions in the captioned civil action and to submit to this Court recommendations for the disposition of these motions.

On May 16, 2006, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding Defendant CSX Transportation's motion to dismiss Plaintiffs' ninth cause of action for unfair and deceptive trade practices. The Defendant CSX has advised the Court that while it disagrees with the Magistrate Judge's recommendation that its motion be denied, it will not file any objections thereto.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that Defendant CSX's motion to dismiss be denied.

IT IS, THEREFORE, ORDERED that the motion of Defendant CSX Transportation, Inc., to dismiss the Plaintiffs' ninth cause of action for unfair and deceptive trade practices is hereby **DENIED**.

Signed: June 12, 2006



Lacy H. Thornburg
United States District Judge

